

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

DAVID BUSWELL, JONATHAN CHIGGES, AND	:	
AMERICAN FEDERATION OF STATE, COUNTY,	:	
AND MUNICIPAL EMPLOYEES, COUNCIL 81,	:	
Local 3911, AFL-CIO,	:	
	:	ULP No. 17-04-1102
Charging Parties,	:	
	:	PROBABLE CAUSE DETERMINATION
v.	:	
	:	
NEW CASTLE COUNTY, DELAWARE,	:	
	:	
Respondent.	:	

BACKGROUND

New Castle County, Delaware (County) is a public employer within the meaning of §1302(p) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (PERA).

The American Federation of State, County and Municipal Employees, Council 81 (AFSCME), is an employee organization within the meaning of 19 Del.C. §1302(i). By and through its affiliated Local 3911, AFSCME is an exclusive bargaining representative, within the meaning of 19 Del.C. §1302(j). AFSCME Local 3911 represents the bargaining unit of County employees which includes all Emergency Medical Services (EMS) personnel. *DOL Case 302*.

David Buswell and Jonathan Chigges were both employed as paramedics by the County Emergency Medical Services department. They held bargaining unit positions represented by AFSCME Local 3911 until they were dismissed from duty on or about March 1, 2017.

The County and AFSCME are parties to a collective bargaining agreement for this bargaining unit which has a term of July 1, 2015 through June 30, 2019.

On April 18, 2017, Buswell, Chigges and AFSCME Local 3911 (collectively, “Charging Parties”) filed an unfair labor practice charge with the Public Employment Relations Board (PERB) alleging conduct by the County in violation of 19 Del.C. §1307 (a)(1) and (a)(5), which state:

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
 - (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
 - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.

The Charging Parties allege the County violated its obligations under the PERA by unlawfully depriving Buswell and Chigges of their statutory rights to union representation during an investigatory interview, prohibiting them from exercising their statutory rights to engage in concerted activities for the purposes of their mutual aid and protection, and refusing to provide AFSCME Local 3911 information which is relevant and necessary for the union to fulfill its representational duties under the PERA.

On May 1, 2017, the County filed its Answer to the Charge, denying the conclusions and assertions that it had violated the PERA. The County included in its Answer affirmative defenses, asserting the Charge fails to state a claim upon which relief may be granted and the Charge is subject to dismissal or stay because it involves a matter of contractual interpretation.

Charging Parties filed a response to the County’s affirmative defenses on May 11, 2017, in which it denied the factual and legal positions set forth therein.

This probable cause determination is based upon a review of the pleadings submitted in this matter.

DISCUSSION

Regulation 5.6 of the Rules of the Public Employment Relations Board requires:

- (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.
- (b) If the Executive Director determines that an unfair labor practice has, or may have occurred, he shall, where possible, issue a decision based upon the pleadings; otherwise he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

For purposes of determining whether probable cause exists to support an unfair labor practice charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Parties in order to avoid dismissing a valid charge without the benefit of receiving evidence. *Flowers v. DART/DTC*, ULP 04-10-453, V PERB 3179, 3182 (2004).

Concerning the allegation that Buswell and Chigges were deprived of statutory rights during the investigatory interviews, the County admits in its Answer to the Charge that at least Buswell requested union representation when he met Dr. Rosenbaum on February 20, 2017. It also admits that Chief Tan transmitted a recommendation for Buswell's dismissal on March 1, 2017. The content of the February 20, 2017 meeting is specifically included in the "Statement of Facts" in the Record of Discipline, appended to the Charge as Exhibit C. Considered in a light most favorable to the Charging Parties, these allegations and admissions are sufficient to establish probable cause to believe the County may have violated its statutory obligations.

The Charge also alleges the County interfered with the Charging Parties' statutory rights to engage in concerted activities for the purpose of mutual aid and protection when it ordered Buswell and Chigges not to discuss the alleged misconduct or the investigation thereof with other

employees. This is an issue of first impression before the PERB. In order to determine whether statutory rights were violated, an evidentiary record must be created and argument received and considered.

The third substantive issue raised by this Charge concerns the County's duty to provide information to the union, upon request, which relates to the enforcement of bargaining unit members' rights under the collective bargaining agreement. Delaware PERB case law concerning the employer's duty to provide information is well settled. Where requested information relates to a potential grievance, the test for relevance is liberal. *AFSCME Locals 1007, 1267 and 2888 v. DSU*, ULP 10-04-739, VII PERB 4693, 4704 (2010). The PERA requires the public employer to act in good faith to provide "access to relevant information necessary for the bargaining representative to intelligently determine facts, assess its position and decide what course of action, if any, to pursue." *NCCEA/DSEA/NEA v. Brandywine School District*, ULP 85-06-005, I PERB 131, 149 (1986). This obligation has been recognized by Delaware's Public Employment Relations Board, Court of Chancery, and Supreme Court. *Bd. of Education of Colonial School District v. Colonial Education Assn., DSEA/NEA*, CA No. 14383, II PERB 1343 (Del.Chan.,1996), *aff'd Colonial Education Assn. v. Bd. of Education*, 685 A.2d 361, III PERB 1519 (Del., 1996); *AAUP v. DSU*, Del. PERB., ULP 95-10-159, III PERB 2177 (Decision on Remand, 2001); *Delaware Correctional Officers Association v. Delaware Dept. of Correction*, ULP No. 00-07-286, III PERB 2209, 2214 (2001), *AFSCME Locals 1007, 1267 and 2888 v. DSU*, ULP 10-04-739, VII PERB 4693, 4705 (2010).

A public employer's duty to provide information requires a reasonable, good faith effort to respond in a timely manner to the Union's request. Absent evidence justifying an employer's delay in furnishing a union with relevant information, such a delay will constitute a violation of §1307(a)(1) and (a)(5) because the union is entitled to information at the time of its initial request and it is the employer's duty to furnish it as promptly as possible.

AFSCME Council 81, Local Unions 320 & 1102 v. City of Wilmington, ULP 10-12-781, VII PERB 4849, 4856 (2010).

The County admits in its Answer that its Office of Human Resources provided “limited information” in response to AFSCME 3911’s repeated requests for information. Although it also asserts it is “in the process of gathering and reviewing information related to the numerous requests for information and intends to provide a complete response to the Union this week” (presumably the week of May 1 – 5, 2017), it did not provide its initial response nor any reasons as to why it could not or had not provided information in response to AFSCME’s March 3, 2017 request.

The allegations relating to the County’s failure or refusal to provide information, if proven, may support the conclusion that the PERA has been violated. It will be the Charging Parties’ burden to establish both the factual and legal support for such a finding.

For the reasons set forth above, the County’s assertion that the Charge fails to state a claim upon which relief may be granted under 19 Del.C. §1307(a)(1) and/or (a)(5) is without merit.

The County’s request that this matter be deferred or stayed pending the exhaustion of the contractual grievance procedures is also without merit and is dismissed. The purpose of PERB’s discretionary deferral policy is to assure that issues of contractual interpretation and/or administration are resolved through the parties’ negotiated grievance and arbitration procedures. In this case, the issues raised are statutory in origin, namely whether the County interfered with the protected rights of the employees and/or the obligations of AFSCME Local 3911 to perform its representational functions. There is no assertion by the County that any of these rights are protected by the negotiated collective bargaining agreement or that there is a currently pending grievance(s) in which there is unity of issue.

DECISION

Considered in a light most favorable to the Charging Parties, the pleadings are sufficient to establish that the County may have violated 19 Del.C. §1307 (a)(1) and/or (a)(5), as alleged. The pleadings raise both questions of fact and law which can only be resolved following the creation

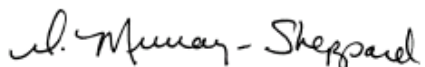
of a complete evidentiary record and the consideration of argument.

WHEREFORE, a hearing will be promptly scheduled for the purpose of developing a full and complete factual record upon which a decision can be rendered concerning:

WHETHER NEW CASTLE COUNTY INTERFERED WITH THE PROTECTED RIGHTS OF BARGAINING UNIT EMPLOYEES OR AFSCME LOCAL 3911 DURING AN INVESTIGATION WHICH RESULTED IN DISCIPLINE AND/OR VIOLATED ITS DUTY TO BARGAIN IN GOOD FAITH BY FAILING OR REFUSING TO PROVIDE INFORMATION WHICH WAS REASONABLY RELEVANT AND NECESSARY TO THE UNION IN PERFORMING ITS REPRESENTATIONAL OBLIGATIONS IN VIOLATION OF 19 DEL.C. §1307(A)(1) AND/OR (A)(5).

Having found probable cause based on the pleadings, the County's assertion that the charge fails to state a claim upon which relief can be granted is denied. For the reasons set forth above, the County's request for stay of further processing or deferral of the Charge to resolution through the negotiated grievance procedure is also denied.

DATE: May 30, 2017



DEBORAH L. MURRAY-SHEPPARD
Executive Director
Del. Public Employment Relations Bd.